| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/815,131 | 03/31/2004 | Ralf Ehret | 13906-180001 / 2004P00204 | 9171 |

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| EXAMINER |
|---|
| CARDENAS NAVIA, JAIME F |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3624 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 04/21/2010 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<table>
<tr><td rowspan="3"><strong>Office Action Summary</strong></td><td><strong>Application No.</strong><br>10/815,131</td><td><strong>Applicant(s)</strong><br>EHRET ET AL.</td></tr>
<tr><td><strong>Examiner</strong><br>Jaime Cardenas-Navia</td><td><strong>Art Unit</strong><br>3624</td><td></td></tr>
</table>

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *14 December 2009*.

2a)☐ This action is **FINAL**.  2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,2,5-9,11-13,15 and 16* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5-9,11-13,15 and 16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some *  c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

## DETAILED ACTION

### *Introduction*

1.      This **NON-FINAL** office action is in response to Applicant's submission filed on

December 14, 2009.  Claims 1, 2, 5-9, 11-13, 15, and 16 are pending.

### *Response to Arguments*

2.      Applicant's arguments have been fully considered by the Examiner.  In particular,

Applicant argues that:

        (A) regarding independent claims 1 and 8, Virta fails to set forth a *prima facie* case of

anticipation and does not disclose all of the claimed elements.

        **Regarding argument (A)**, Applicant's arguments have been found persuasive.

Therefore, the rejection has been withdrawn.  However, upon further consideration, a new

ground of rejection is made in view of Miller (US 5,408,663).

### *Claim Rejections - 35 USC § 101*

3.      35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

4.      **Claims 8, 9, 11-13, 15, and 16 are rejected** under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

        **Regarding claim 8**, based on the specification (par. 39), the claimed 'computer program

product tangibly embodied in an information carrier' could include signals.  Signals and waves

are considered non-statutory subject matter. To overcome this rejection, Examiner recommends

amending the claims to explicitly state that the computer program product does not transmit

(propagate) signals.

For purposes of examination, Examiner has assumed that necessary corrections have been

made.

### *Claim Rejections - 35 USC § 102*

5.      The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or
> on sale in this country, more than one year prior to the date of application for patent in the United States.

6.      **Claims 1, 2, 5-8, 13, 15, and 16 are rejected** under 35 U.S.C. 102(b) as being

anticipated by Miller (US 5,408,663).

**Regarding claim 1**, Miller teaches a computer-implemented method (abstract)

comprising:

receiving at a computer system a first scheduling request for a resource, the first

scheduling request specifying that the resource is to be scheduled for a requested amount of time

sometime within a requested time period, the requested amount of time being less than a

maximum time amount that the resource is usable during the requested time period, wherein due

to the first scheduling request the resource has an availability for the requested time period less

than one hundred percent (col. 20, lines 32-38, first scheduling request is that a worker will work

40 hours per week. Requested amount of time (herein referred to as RAT) is forty hours,

requested time period (herein referred to as RTP) is a week. Thus, a worker will work forty

hours per week and has an availability for the RTP of less than one hundred percent);

receiving at the computer system a second scheduling request for the resource that refines

the first scheduling request, the second scheduling request specifying that a portion of the

requested amount of time is to be scheduled in a specific time slot within the requested time

period, the portion of the requested amount of time being less than the requested amount of time

(col. 21, lines 21-64, system finds available resources who have the required capabilities and

assigns one to the current task being scheduled. Col. 22, lines 12-34, the time required to

complete the task is deducted from the worker's available time (each resource (worker) has an

availability calendar). Thus, assigning a worker to a task is the second scheduling request

specifying that a portion of the forty hours per week of work is to be scheduled in a specific time

slot within the RTP);

scheduling by the computer system in an electronic schedule the portion of the requested

amount of time in the specific time slot, wherein scheduling the portion of the requested amount

of time causes the availability of the resource for the specific time slot to be zero percent (col.

11, lines 1-35, resources (workers) are assigned to tasks in a chronological order on a calendar,

such that the resource is no longer indicated as available during that time interval); and

scheduling by the computer system in the electronic schedule a remaining portion of the

requested amount of time within the requested time period except within the specific time slot,

wherein scheduling the remaining portion of the requested amount of time causes the availability

of the resource for a remaining portion of the requested time period to be greater than zero

percent and less than one hundred percent (col. 11, lines 1-35, col. 21, lines 21-64, scheduling more of the forty hours into the week and reducing availability of the resource (worker)).

**Regarding claim 2**, Miller teaches wherein the resource is a person that provides a service (col. 21, lines 4-20, resource is a worker that has a capability for performing a service), a machine, a tool, or a workstation.

**Regarding claim 5**, Miller teaches wherein the first scheduling request specifies that the resource is to be scheduled for a predetermined number of hours within the requested time period that includes a specific date range (col. 2, lines 32-38, predetermined number of hours is 40, RTP specific date range is a week, which is marked on a calendar, col. 22, lines 12-34).

**Regarding claim 6**, Miller teaches wherein the second scheduling request refines the first scheduling request by requesting that a portion of the predetermined number of hours from the first scheduling request is to be scheduled for the specific time slot on a specific date within the date range (col. 21, lines 21-64, system finds available resources who have the required capabilities and assigns one to the current task being scheduled. Col. 22, lines 12-34, the time required to complete the task is deducted from the worker's available time (each resource (worker) has an availability calendar). Thus, assigning a worker to a task is the second scheduling request specifying that a portion of the forty hours per week of work is to be scheduled in a specific time slot within the RTP).

**Regarding claim 7**, Miller teaches wherein scheduling in the electronic schedule is done to determine a utilization of the resource (col. 21, lines 21-64, col. 22, lines 12-34, resource availability).

**Regarding claim 8**, it is rejected using the same art and rationale used above for rejecting claim 1. This is because claim 8 claims a computer program product for performing the method of claim 1.

**Regarding claim 13**, Miller teaches referring by the computer system to resource's availability information to verify that the availability of the resource for the specific time slot on the specific date is sufficient for the second scheduling request (col. 21, lines 21-64, col. 22, lines 12-34, resource availability).

**Regarding claim 15**, Miller teaches wherein the first scheduling request and the second scheduling request are received from a same source (col. 20, lines 32-38, the resource allocation system initially schedules workers for forty hours per week, col. 21, lines 21-64, the resource allocation system then schedules specific tasks).

**Regarding claim 16**, Miller teaches wherein the first scheduling request and the second scheduling request are received from a same source (col. 20, lines 32-38, the resource allocation system initially schedules workers for forty hours per week, col. 21, lines 21-64, the resource allocation system then schedules specific tasks).

### *Claim Rejections - 35 USC § 103*

7.      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.      **Claims 9, 11, and 12 are rejected** under 35 U.S.C. 103(a) as being unpatentable over

Miller (US 5,408,663), as applied to claims 1, 2, 5-8, 13, 15, and 16 above, further in view of

Virta (US 2005/0065832 A1).

 **Regarding claim 9**, Miller does not explicitly teach wherein the executable instructions,

when executed, further cause a resource planning application to receive at the computer system

<u>all time slots</u> in which the resource is usable within the requested time period.

 Virta teaches wherein the executable instructions, when executed, further cause a

resource planning application to receive at the computer system all time slots in which the

resource is usable within the requested time period (par. 12, 14, sharing, comparing, and

superimposing calendars, par. 25, 26, checking a user's availability using shared calendars).

 The inventions of Miller and Virta pertain to dynamic scheduling of resources. All the

claimed elements were known in the prior art and one skilled in the art could have combined the

elements as claimed by known methods with no change in their respective functions, as Virts

does not teach away from or contradict Miller, but rather, teaches a function that was not

addressed. The claimed invention is merely a combination of old and well-known elements, and

the combination would have yielded predictable results to one of ordinary skill in the art at the

time of the invention. Thus, it would have been obvious to combine the teachings, motivated by

the teaching in Miller that the resource allocation system has stored the availability information

for all its resource (col. 21, lines 21-64, col. 22, lines 12-34, col. 16, lines 43-67).

 **Regarding claim 11**, Miller does not explicitly teach receiving at the computer system

all time slots in which the resource is usable within the requested time period according to

resource's availability information stored in a database.

Virta teaches receiving at the computer system all time slots in which the resource is usable within the requested time period according to resource's availability information stored in a database (par. 12, 14, sharing, comparing, and superimposing calendars, par. 25, 26, checking a user's availability using shared calendars, fig. 2, database).

The inventions of Miller and Virta pertain to dynamic scheduling of resources. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Virts does not teach away from or contradict Miller, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the teaching in Miller that the resource allocation system has stored the availability information for all its resource (col. 21, lines 21-64, col. 22, lines 12-34, col. 16, lines 43-67).

**Regarding claim 12**, Miller does not explicitly teach wherein the resource's availability information is maintained as a set of time intervals in the database.

Virta teaches wherein the resource's availability information is maintained as a set of time intervals in the database (par. 15, interval storage unit, fig. 4, 5, hour time intervals).

The inventions of Miller and Virta pertain to dynamic scheduling of resources. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Virts does not teach away from or contradict Miller, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and

the combination would have yielded predictable results to one of ordinary skill in the art at the

time of the invention. Thus, it would have been obvious to combine the teachings, motivated by

the teaching in Miller that the resource allocation system has stored the availability information

for all its resource (col. 21, lines 21-64, col. 22, lines 12-34, col. 16, lines 43-67).

## *Conclusion*

9.      Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-

1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./

Examiner, Art Unit 3624
April 10, 2010


/Romain  Jeanty/
Primary Examiner, Art Unit 3624
April 18, 2010